

SENT BY:HOWARD & HOWARD

; 1-10-97 ; 15:16 ;

KALAMAZOO-

2028573821:# 2/20

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JAN 10 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Federal State Joint Board
Universal Service

)
)
)
)

CC Docket No. 96-45

To: The Commission

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS
OF THE
SMALL CABLE BUSINESS ASSOCIATION

Eric E. Breisach
Christopher C. Cinnamon
Kim D. Crooks
Howard & Howard
107 W. Michigan Ave., Suite 400
Kalamazoo, Michigan 49007
(616) 382-9711

January 10, 1997

Attorneys for the
Small Cable Business Association

No. of Copies rec'd
List ABCDE

024

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	SERVICES ELIGIBLE FOR UNIVERSAL SERVICE FUND SUPPORT TO SCHOOLS AND LIBRARIES MUST INCLUDE INTERNET ACCESS.	2
III.	THE IDENTITY OF THE PROVIDER SHOULD NOT DISQUALIFY A SCHOOL OR LIBRARY FROM BENEFITTING FROM DISCOUNTED SERVICES.	5
IV.	THE COMMISSION SHOULD STRUCTURE THE COMPETITIVE BIDDING PROCESS TO MAXIMIZE FAIRNESS AND TO MINIMIZE MANIPULATION.	7
V.	THE COMMISSION SHOULD ESTABLISH PROCEDURES THROUGH WHICH EXISTING AGREEMENTS WITH SCHOOLS AND LIBRARIES MAY QUALIFY FOR USF SUPPORT.	8
VI.	CONCLUSION	10

SUMMARY

SCBA files these comments because its members will continue to play a key role in bringing advanced telecommunications and information services to schools and libraries, especially in small and rural markets. SCBA supports the provisions of the *Recommended Decision* addressing Section 254(h). The *Recommended Decision* adheres to the language of the statute and furthers Congressional intent to enhance proliferation of telecommunications and information services to schools and libraries. Certain ILECs seek to undermine Congress' and the Joint Board's efforts and advocate positions that will stall the expansion of such services - except when provided by ILECs.

The Commission's Order can reject these positions and adopt much of the Joint Board's recommendations on Section 254(h). To accelerate competition and maximize efficient use of universal service funds dedicated to educational telecommunications, SCBA also requests that the Commission's order include the following:

- An unequivocal statement that Internet access provided to schools and libraries is an advanced telecommunications and information service eligible for USF support.
- A rule indicating that eligibility for USF funds does not depend on the identity of the provider of eligible services.
- Rules that structure the competitive bidding process to maximize fairness and minimize manipulation, including distinct RFP sections and responses required for discrete eligible services and a sealed bidding requirement.
- Rules to permit support of existing contracts for eligible services, subject to limited scrutiny by the Administrator and interested parties.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Federal State Joint Board
Universal Service)
)
)
)

CC Docket No. 96-45

**REPLY COMMENTS
OF THE
SMALL CABLE BUSINESS ASSOCIATION**

L INTRODUCTION

SCBA files these reply comments because its members are especially interested in the implementation of Section 254(h). SCBA is a non-profit trade association representing about 300 small cable companies serving rural and small markets in over 30 states. Many SCBA members and other small cable companies provide cable television and other telecommunications services to schools and libraries, especially in small and rural markets. Locally-based and experienced in facilities-based telecommunications, small cable companies can and should play a key role in expanding the competitive provision of advanced telecommunications and information services to schools and libraries.

SCBA believes that the Joint Board has recommended a structure for implementing Section 254(h) that will further the goal of rapidly expanding advanced telecommunications services to schools and libraries. Unfortunately, some commenters disagree with the Joint Board and seek restrictions on Universal Service Funds (USF) for educational telecommunications services,

restrictions that will stifle competition and staunch the development of these critical educational tools.

To these comments, SCBA replies.

II. SERVICES ELIGIBLE FOR UNIVERSAL SERVICE FUND SUPPORT TO SCHOOLS AND LIBRARIES MUST INCLUDE INTERNET ACCESS.

SCBA members are extremely active in expanding educational Internet access, especially in small and rural markets. One hindrance on more rapid expansion is the ability of less affluent school systems and libraries to pay for Internet access and the internal wiring necessary for such access. The Joint Board has addressed this problem.

The Joint Board recommends that the Commission's rules implementing Section 254(h) should include Internet access provided to schools and libraries as a service eligible for USF support.¹ To the chorus of commenters supporting this recommendation,² SCBA adds the voice of small cable. As the Joint Board points out, Section 254(h)(2)(A) gives the Commission the authority to promulgate this rule to enhance access to information services.³ From a policy perspective, the Joint Board concludes that discounted Internet access will be essential to achieving Congress' intent "to assure that no one is barred from benefiting from the power of the Information Age."⁴ A review of the many comments from schools and libraries reinforces the vital importance of Internet access to educating the nation's students. With the increasing proliferation of Internet resources and communications, this comes as no surprise.

¹*Recommended Decision* at ¶ 462.

²See e.g., NCTA Comments at 8-9; Rural Telephone Coalition (RTC) Comments at 36; Illinois State Board of Education Comments at 2; Dickinson (North Dakota) Public Schools Comments at 1 (showing the current high opportunity cost of Internet access in its area).

³*Recommended Decision* at ¶ 462.

⁴*Recommended Decision* at ¶ 465 quoting S. Rep. No. 230, 104th Cong., 2d Sess. 131, 133 (Joint Explanatory statement).

What is surprising is that certain ILECs seek to undermine Congress' and the Joint Board's efforts to expand Internet access to all schools and libraries, regardless of wealth or location. Ameritech and others argue that schools and libraries should *not* receive USF support for Internet access.⁵ Ameritech declares that Internet access to schools and libraries should not be eligible for USF support because companies other than ILECs will receive USF distributions. "The principle of competitive neutrality would be violated if providers who are not required to contribute toward the preservation of universal service were permitted to receive disbursements from the fund."⁶ USTA similarly objects.⁷

Neither commenter articulates how the vast multistate playing fields on which they compete would tilt if a small cable company were to provide Internet access to a rural school system or library with support from the USF. The Commission should not allow some ILECs' attenuated notions of "competitive neutrality" to hinder Congress' goal of enhancing students' access to the vast resources of the Internet.

Rural areas typically served by small cable would suffer the greatest harm under the commenters' interpretation. Because rural markets are unlikely to see local competition, schools, libraries and health care providers in rural areas would not have access to the *competitive* market for the provision of advanced telecommunications services. This would create for the ILECs of rural service areas de facto monopolies on the provision subsidized advanced telecommunications services.

The approach adopted by these commenters regarding Internet access blurs the critical distinction between the providers of core universal services and the providers of advanced

⁵Ameritech Comments at 18; USTA Comments at 34.

⁶Ameritech Comments at 18.

⁷USTA Comments at 34.

telecommunications services to educational institutions, libraries and health care entities. Congress sought to hold the providers of core universal services to a high standard that requires state PSC approval as a precondition to receipt of USF.⁸ In the case of rural telcos, Congress established an even higher standard requiring the state PSCs to find that the grant of USF to a competitor of a rural telco served the public interest.⁹ If the Commission blurs the distinction between a core provider requiring state PSC certification and a provider of advanced services not requiring certification, schools, libraries and health care providers, especially those in rural areas, will not have access to a competitive market for those services. The competitive bidding procedures will deliver a hollow promise if only a single bidder qualifies to submit a proposal.

The industry rift between RBOCs and independent telcos becomes sharp on this issue. The Rural Telephone Coalition endorses the Joint Board's position on Internet access.¹⁰ On this issue, SCBA supports RTC.

SCBA suggests that the motivation for the objections from Ameritech and others is transparent and is supported by neither law nor policy. Those opposing USF support for Internet access seek to impede expansion and competition and maintain monopoly power in markets for educational telecommunications. This conflicts with Section 254(h)(2) and Congressional intent to expand educational access to the Internet.¹¹

⁸47 U.S.C. § 214(e)(1).

⁹47 U.S.C. § 214(e)(2).

¹⁰RTC Comments at 36.

¹¹See Joint Explanatory Statement at 133, expressly identifying Internet service as an advanced service the access to which the Commission can enhance under Section 254(h)(2).

The Commission should reject such arguments and accept the Joint Board's recommendation. USF support for Internet access will facilitate expansion of, and competition in, the market for telecommunications services for schools and libraries. With USF support as outlined by the Joint Board, the vibrant and competitive markets for Internet access will rapidly expand the provision of this vital service to more schools and libraries, particularly those in small and rural markets, regardless of wealth and location.

III. THE IDENTITY OF THE PROVIDER SHOULD NOT DISQUALIFY A SCHOOL OR LIBRARY FROM BENEFITTING FROM DISCOUNTED SERVICES.

For Section 254(h)(2) to work, any provider that meets the terms of a request for eligible services by a school or library becomes eligible for the appropriate USF support. Imposing a provider approval procedure or other qualification process will saddle schools, libraries and potential providers with administrative burdens and costs that will make participation by many small entities problematic, if not impossible. The Commission should remove any uncertainty and clearly direct that the identity of the provider is not a restriction on USF support for eligible services.

At several points, the Joint Board has indicated that the identity of a provider should not disqualify a school or library from obtaining USF support. In an initial policy statement, the Joint Board recommends that the Commission adopt rules that provide schools and libraries with maximum flexibility to purchase whatever package of telecommunications services they believe will meet their needs most effectively and efficiently.¹² Implicitly, this means that schools and libraries can entertain bids from providers regardless of whether such companies are "core service" providers or are approved by state commissions as universal service providers.

The *Recommended Decision* makes later this point explicitly. The Joint

¹²*Recommended Decision* at 438 (emphasis added).

Board indicates that cable operators and wireless operators should be among the entities likely providing discounted telecommunications and information services to schools and libraries.¹³ The Joint Board further states, "there is no reason to exclude carriers who do not provide core services, if they can offer eligible services to a school or library at the lowest rate." We believe that Congress desired that schools and libraries receive the services they need from the most efficient provider of those services."¹⁴

The *Recommended Decision* merely elaborates upon the distinction created by Congress. The Communications Act now makes a key distinction between two classes of USF recipients. First, those telecommunications carriers that are designated universal service providers under 47 U.S.C. § 214(e) will continue to receive most of the fund. Second, Section 254(h) now provides that those entities providing eligible services to schools and libraries may receive some measure of partial compensation from the fund.

Certain ILECs oppose this. For example, Ameritech argues that the Commission should restrict eligibility to receive USF funds for providing discounted services to schools and libraries only to "telecommunications carriers who have an obligation to contribute to the preservation of universal service."¹⁵ Ameritech asserts that otherwise "the principal of competitive neutrality would be violated."¹⁶ Ameritech implies that somehow its ability to compete will suffer if a small cable

¹³*Id.* at ¶ 543. "We recommend that the Commission interpret geographic area to mean the area in which the service provider is seeking to serve customers, e.g., the telephone or cable company's franchise area and a wireless company's service area.

¹⁴*Id.* at ¶ 544 (emphasis added).

¹⁵Ameritech Comments at ¶ 18.

¹⁶*Id.*

company or other non-ILEC receives USF funds as partial compensation for providing telecommunications services to a rural grade school.

The Commission should reject this attempt to exclude most providers from the educational telecommunications market. As the Joint Board explains, Congress has sought to expand rapidly deployment of telecommunications and information services to schools and libraries. The attempts by certain ILECs to restrict the ability of small cable and others to participate in this market represents the antithesis of Congressional intent. The Commission should make clear that any entity that provides eligible services to a school or library will be eligible for USF support.

IV. THE COMMISSION SHOULD STRUCTURE THE COMPETITIVE BIDDING PROCESS TO MAXIMIZE FAIRNESS AND TO MINIMIZE MANIPULATION.

SCBA supports the competitive bidding process for eligible educational telecommunications recommended by the Joint Board. SCBA further supports the comments of NCTA proposing rules that will minimize ILECs ability to cross-subsidize and "game" the competitive bidding process.¹⁷ This issue is especially important for small cable operators that often lack the administrative and financial resources to effectively challenge bidding improprieties.

SCBA members currently compete with large and small ILECs in markets for video, telephony and educational telecommunications. Despite federal and state restrictions, the availability of revenues from regulated services frequently underwrites an ILECs ability to compete on price.¹⁸

¹⁷NCTA Comments at 21-22.

¹⁸For a prime example of improper cross-subsidization of educational telecommunications involving Ameritech, see *City Signal, Inc. v. Michigan Bell Telephone Co.*, Michigan Public Service Commission Case No. U-10225 (1993), rev'd on other grounds, *Michigan Bell v. PSC*, 214 Mich. App. 1 (1995). *City Signal* arose after Michigan Bell under cut competing bids to provide a distance learning network to the Kent County (Michigan) Intermediate School District. The MPSC found that Michigan Bell obtained the contract by offering the services at a price that did not reflect all appropriate costs and found the ILEC guilty of improper cross-subsidization and anti-competitive conduct.

Particularly for small cable, it is nearly always too costly to support a state or federal cross-subsidization action in an attempt to level improper competitive advantage.

Consequently, the prophylactic rules advocated by NCTA are especially important to small cable. At a minimum, the Commission should require that the bidding process conform to the following:

- RFPs must indicate separate requests for specific services.
- RFP responses must similarly provide distinct bids for each separate service.
- All responses should be submitted through a sealed bidding process.

These rules will facilitate an efficient and fair analysis of competing bids and should restrict the ability of regulated telecommunications providers to cross-subsidize a bid to serve a school system or library. By increasing fairness and competition in the bidding process, the Commission will further the goals of Section 254(h) by lowering costs to schools and libraries and maximizing the benefits from the portion of USF funds dedicated to educational telecommunications.

V. THE COMMISSION SHOULD ESTABLISH PROCEDURES THROUGH WHICH EXISTING AGREEMENTS WITH SCHOOLS AND LIBRARIES MAY QUALIFY FOR USF SUPPORT.

Many SCBA members currently have contracts with schools and libraries to provide institutional network services, Internet access, and other telecommunications and video services.

The *Recommended Decision* briefly addresses the issue of the application of discounts to existing contracts between providers and schools and libraries. It appears that the Joint Board recommends that the Commission allow such contracts to be eligible for discounts from the effective date of the Commission's universal service rules.¹⁹ SCBA supports this recommendation and suggests

¹⁹*Recommended Decision* at ¶ 572.

some key refinements that will maximize the efficiency of the portion of the USF that supports existing contracts for educational telecommunications.

SCBA members experiences align with the Joint Board's conclusion that "schools and libraries with budgetary constraints have strong incentives to secure the lowest rates that they can as the pre-discount price."²⁰ To facilitate this expansion and the fair allocation of USF funds, SCBA suggests that the Commission establish a presumption in favor of USF support for existing agreements. The Commission should establish rules and procedures to allow this presumption to be overcome in cases where an existing agreement is shown to be inefficient or unreasonably priced.

The existing contract support approval procedures should include the following:

- **Request and Notice.** Much like the recommended bidding procedures for new contracts, if an eligible educational user and a provider with a current contract seek USF support for that contract, they must request such support from the Administrator and must post notice of this request on a dedicated Web site.
- **Opportunity to examine agreement and object.** Interested parties should be able to obtain the details of the agreement from the Administrator. Within a specific period, for example 60 days from the date of the posting, interested parties could submit objections to the administrator stating why such an agreement should not receive USF support. The parties applying for USF funds could then respond.
- **Grounds to object.** To limit the scope of review, objecting parties would have to specify objections to a proposed existing agreement on the grounds of unreasonable prices, improper cross-subsidization or anti-competitive conduct by the parties.

²⁰*Id.*

- **Administrator decides.** The Administrator would make the initial decision, with a presumption in favor of supporting the existing agreement, subject to appeal to the Commission. If the Administrator finds that a party has established that an existing contract fails to advance the goals of USF support for educational telecommunications due to unreasonable prices, improper cross-subsidization or anti-competitive conduct, the parties could either withdraw their request for USF support or proceed through the open bid process.

Having these procedures in place will avoid the automatic, and almost surreptitious subsidies advocated by some commenters. For example, the Minnesota Independent Coalition seeks "specifically exempting existing arrangements from the procedural requirements imposed on new projects, including competitive bidding, including the submission of requests to the Fund Administrator, for posting on the Internet and notice to all carriers certified in the area."²¹ Such a process would prevent even a modicum of scrutiny of potentially abusive or collusive deals between educational institutions and providers. Because the pool of USF funds for educational telecommunications is so limited, it is critical that the money be allocated in a manner that maximizes the benefits in accordance with Section 254(h).

A review process and opportunity to challenge the advocates of an existing agreement seeking USF funds will help protect competing providers and educational institutions, especially smaller entities, from misuse and abuse of USF support for educational telecommunications.

VI. CONCLUSION

The *Recommended Decision* represents a sound first step towards the availability of low-cost competitive advanced telecommunications to schools, libraries and health care providers.

²¹Minnesota Independent Coalition Comments at 31.

Clarification of certain provisions and support of existing contracts as part of the Commission's Order
will ensure that rural areas will realize access to these services as well.

Respectfully submitted,



Eric E. Breisach
Christopher C. Cinnamon
Kim D. Crooks
Howard & Howard
107 W. Michigan Ave., Suite 400
Kalamazoo, Michigan 49007
(616) 382-9711

January 10, 1997

Attorneys for the
Small Cable Business Association

E:\361\eeb\eeb\reply\com\254\reply